IN THE HIGH COURT OF JUDICATURE

ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 1514 of 2005

Dated: 4th Augsut 2005.

Between:

Director, Sainik Welfare

..... PETITIONER

AND

Sri A.Prakash, formerly Record Asst.,

Directorate of Sainik Welfare, Hyderabad.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.1514 OF 2005

ORAL ORDER :

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ or direction more particularly one in the nature of a "WRIT OF CERTIORARI" calling for the records connected with order in O.A.No.4269/2000, Dt.13-09-2004 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and to quash the same as erroneous and contrary to law and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The respondent was working as Record Assistant with the writ petitioner. It appears that he was appointed on 21-05-1986, temporarily, as attender and his services were regularized on 26-11-1987. Later he was promoted as Record Assistant with effect from 07-01-1992. From the record available, it appears that the respondent was irregular in attending to official duties. On a number of occasions, he was absent from the official duty without any appropriate authorization (the details of which may not be necessary for the present purpose). Eventually, the respondent was absent from 07-11-1998 to 14-03-2000 and in the circumstances, the writ petitioner issued notice, dated 03-06-1999, calling upon him to report to duty and also got the same published in various local newspapers. As there was no response from the respondent, charges were framed against him and an Enquiry Officer was appointed, who submitted his report, dated 01-03-2000. Based on the said report, the respondent was removed from service by an order, dated 14-03-2000, and the same was published in the A.P. Gazette, dated 29-06-2000. Aggrieved by the same, the respondent approached the A.P. Administrative Tribunal (for short 'the Tribunal'). Unfortunately, though the matter was pending before the Tribunal for a period of almost four years, the writ petitioner did not choose to file a counter, disputing the allegations made in the O.A. The matter, eventually, came to

be allowed by the impugned order, dated 13-09-2004 and hence the writ petition.

The only ground, on which the Tribunal allowed the O.A., was that the respondent herein produced a medical certificate dated 24-05-2000 from a doctor, who incidentally was working with M.N.J. Hospital run by the Government, but to our surprise, the medical certificate was given by the said doctor in his private capacity, as the respondent herein was never treated in M.N.J. Hospital. The said certificate was to the effect that the respondent was under the treatment of the said doctor for a period between 05-11-1999 and 24-05-2000 “for mental depression”. Therefore, the Tribunal thought it fit to give a further opportunity to the respondent to explain his case before the Enquiry Officer.

It is unfortunate that no counter was filed in the O.A. before the Tribunal, but it appears that the learned Government Pleader was heard in the matter.

In a matter like this, the lethargy of the writ petitioners, in not filing a counter in spite of the fact that the matter was pending on the file of the Tribunal for a period almost four years, is reprehensible. Eventually, when the decision of the Tribunal went against the writ petitioner, they rushed to this Court challenging the correctness of the said order.

It would be difficult for this Court to decide the issues between the parties, when there was no pleading on behalf of the writ petitioner before the Court of the first instance. Various allegations of fact met by the respondent regarding non-receipt of the charge sheet, the appointment of the Enquiry Officer, etc., which are essential questions of fact, are required to be made by an appropriate pleading and evidence, by way of production of record.

However, we are also not able to sustain the order of the Tribunal for the reason that the Tribunal did not record any finding on the above-referred allegations, on the other hand, choose to place reliance on a document (Medical Certificate) issued by a doctor in his private capacity, which does not disclose the nature of treatment given to the respondent, nor the certificate indicate that the respondent was in such a state of mind that he was disabled from attending his official duties. The certificate, such as the present one, in our view, is not worth the paper on which it was written and is required to be ignored.

In the circumstances, we deem it appropriate to allow the writ petition, setting

aside the impugned order, but, however, in the interest of justice, to remit the matter to the Tribunal enabling the writ petitioner to take effective steps to contest the O.A.

Regarding the failure in filing a counter-affidavit in the O.A., it is stated in para 11 of the affidavit filed in support of the writ petition that the O.A. was disposed of without affording any opportunity to the writ-petitioner. According to the deponent of the affidavit, a copy of the O.A. was not received by the writ petitioner's office and therefore, counter could not be filed.

Whether notice was served or not is a question of fact, which could be decided on the basis of the records available with the Tribunal. We do not know whether the above statement made by the writ petitioner in the affidavit is accurate statement of fact or not. But, in the background of the facts of this case, we deem it appropriate to direct the Tribunal to examine the said issue and also record a clear finding on the same and in the event, it comes to the conclusion that the above extracted statement of the deponent of the affidavit in the writ petition is inaccurate, the Tribunal shall also take appropriate steps in dealing with the deponent of the said affidavit, in accordance with law.

With the above directions, the writ petition is allowed. No costs.

J.Chelameswar, J

M.Venkateswara Reddy, J

9th August 2005

mrk